CHUANG HOCK MENG

v.

PEGAWAI KESIHATAN DAERAH HULU LANGAT KAJANG, SELANGOR DARUL EHSAN & ANOR

HIGH COURT MALAYA, SHAH ALAM
SURIYADI HALIM OMAR J
[CIVIL SUIT NO: MT1-21-110-2002]
23 JULY 2002

FOOD & DRUGS: *Food control - Adulterated food - Seizure of live pigs by officers of Health Department - Whether ultra vires - Whether live pig not 'food' as defined in Act - Food Act 1983, ss. 2, 4(1)(f), 13 - Food Regulations 1985, r. 40(5)*

The officers of the first defendant had seized some 70 live pigs owned by the plaintiff at a certain abattoir in Shah Alam, Selangor. The seizure apparently was made pursuant to ss. 4(1)(f) and 13 of the Food Act 1983 ('the Act') and r. 40(5) of the Food Regulations 1985 ('the Regulations'), upon the officers' reasonable belief that the live pigs contained the drug beta agonists, a substance that contravened the Act and the Regulations. It was not in dispute that of the 70 pigs seized, 4 were slaughtered by the defendants for analysis and were found to contain beta agonists. The plaintiff nonetheless alleged that the seizure, and the other consequential acts of the defendant were *ultra vires* the Act and the Regulations, and in the circumstances, applied for damages and for the return of the balance live pigs. The main issue that arose was whether the live pigs herein were 'food' as that term was defined in s. 2 of the Act.

Held:

[1] Giving the word 'food' in s. 2 of the Act its natural meaning, a live pig is not an 'article' within the meaning of that section that could be used in the composition, preparation or preservation of any food, notwithstanding that a part of a slaughtered pig may be conceded as an article used as an ingredient in the composition of any food. (p 199 b-e)

[2] As the pigs were not food within the context of s. 13 of the Act, the defendants were the wrong authorities to seize the animals at the abattoir. Even if they had been the right authorities, the defendants had aggravated matters by not paying for the 'samples' taken for purposes of analysis, thereby contravening s. 5(1) of the Act. (p 201 c)

[3] The Act caters for 'food' in the ordinary man's accepted sense. As for living animals and matters incidental thereto, in the like of them being prepared for slaughter, the Animal Ordinance 1953 must apply. Therefore, if the plaintiff had committed any offence, it was the Veterinary Department, and not the first defendant, who should have stepped in and seize the live animals. (pp 201 d-e & 202 c)

Obiter:

[1] Considering the lacuna herein, the defendants may wish to invite Parliament to amend the law and extend the definition of 'food' to live animals. Pending that, however, the defendants must patiently wait until the animals are slaughtered, before taking any action against the plaintiff. (p 202 f-g)

[Order in terms of application.]

Case(s) referred to:
Fothergill v. Monarch-Airlines [1980] 3 WLR 221 ***(refd)***
PP v. Yeoh Fah Cheong & Anor [1971] 1 MLJ 41 ***(refd)***
Queen v. Hermann [1879] 4 QBD 284 ***(refd)***

Legislation referred to:
Animal Ordinance 1953, ss. 2, 86
Food Act 1983, ss. 2, 4(1)(f), 5(1), 13, 33B
Food Regulations 1985, r. 40(5)

For the plaintiff - Maniam Raju (K Indran); M/s Gunaretnam & Co
For the defendant - Mary Lim SFC

Reported by WA Shariff

JUDGMENT

Suriyadi Halim Omar J:
The plaintiff had filed on 14 June 2002 an originating summons, praying for certain orders and declarations, *inter alia*, that:

i. the seizure of 71 live pigs by the defendants on 23 May 2002 which were owned by the plaintiff was *ultra vires* the Food Act 1983;

ii. the slaughter of 4 out of the above 71 pigs by the defendants, also on the same date was *ultra vires* the same Act;

iii. the disposal of the samples of the 4 abovementioned slaughtered pigs by the defendants, without being analysed by a second party, was *ultra vires* the same Act;

iv. the balance of the seized live pigs be returned immediately to the plaintiff;

v. damages be paid by the defendants to the plaintiff; and

vi. costs for the action.

With complete appreciation of the facts of this case in mind, necessity requires that I unravel the factual matrix of this case at this early stage, thereafter to be followed in its wake by the connected and relevant laws. The evidence adduced revealed that, on 23 May 2002 officers of the first defendant had seized 70 live pigs owned by the plaintiff, at the Rumah Sembelih Pusat, Shah Alam, Selangor (hereinafter called the abattoir). Acting under s. 4(1)(f) of the Food Act 1983, and founded on alleged reasonable grounds (encl. 6 para. 4 and 5), the defendants undertook this course of action. Section 4(1)(f) reads:

4. Powers of authorised officers.

(1) An authorised officer may at any time for the proper and better performance of his duty:

(a) ...

(b) ...

(c) ...

(d) ...

(e) ...

(f) seize and detain for such time as may be necessary any **food** or appliance by means of or in relation to which he believes **any provision of this Act** has been contravened (emphasis added);

The premise was that, on reasonable grounds, the plaintiff was believed to have contravened s. 13 and r. 40(5) of the Food Regulations 1985 (hereinafter referred to respectively as the FA 1983 and r. 40(5) of the FR 1985). Section 13 reads:

13. **Food** containing substances injurious to health.

(1) Any person who prepares or sells any **food** that has in or upon it any substance which is poisonous, harmful or otherwise injurious to health commits an offence (emphasis added).

Rule 40(5) of the FR 1985 reads:

> (5) Notwithstanding sub-regulations (3) and (4), no person shall import, sell, expose or offer for sale or delivery any food intended for human consumption which contains the drugs as set out in table II to the Fifteenth A Schedule (emphasis added).

One of the drugs prohibited in Table 11 of the abovementioned Fifteenth A Schedule is beta agonists. Therefore, if all the ingredients of the above rule exist, and any person has contravened the above rule, he thus has contravened s. 13, and hence exposed to prosecution. The evidence adduced, as per the certificates indeed showed that the samples of the slaughtered pigs did contain *beta agonists*. As evidenced by one of the prayers, which require that the samples be subject to second opinion, the plaintiffs have not acceded to this evidential aspect. Even though the plaintiffs had alleged that altogether 71 animals were seized, after sifting through the evidence I was satisfied that only 70 were actually seized. I was also satisfied that:

i. the officers responsible for the seizure of the pigs were health officers of the District of Hulu Langat, Selangor Darul Ehsan, responsible to the Ministry of Health;

ii. as samples for analysis were required, to check whether any substance which contravened the Act was present on these animals, four of them were slaughtered. These samples were subsequently sent to Universiti Sains Malaysia, Penang for analysis; and

iii. the results revealed that the samples contained beta-agonists, substance which contravened the Food Act 1983.

The plaintiff in his affidavit had alleged that the seizure of his live pigs, coupled with all the other consequential acts of the defendants, which were *ultra vires* the FA 1983, had caused substantial financial losses to him. Due to the impugned seizure he was prevented from selling the pigs at their optimum price, as their value plummeted with age. The loss was exacerbated by the supposed illegal slaughtering of the four pigs, meant for samples and eventual analysis by Universiti Sains Malaysia, Penang.

Having heard the submissions ventilated by both parties, and the relevant provisions adverted to, I concluded that central to the whole issue was whether the live pigs were food, as defined by s. 2 of the Food Act 1983. If they were not, then whether the animals contained beta agonists or not will be irrelevant, meaning the actions of the defendants were *ultra vires* the Food Act 1983, and the plaintiff will be entitled to his prayers. If the matter were still actionable

against the plaintiff, for being in possession of animals that had poisonous substance, the right thing to do will be for the right authority, acting under the right statute to step in. If I were to conclude that they indeed were food and the actions of the defendants, for purposes of this case were proved to be in order, then this action must be dismissed.

So, in the context of s. 13 of the Food Act 1983, is a live pig food? Food under s. 2 of the Food Act 1983 reads:

> "food" includes every article manufactured, sold or represented for use as food or drink for human consumption or which enters into or is used in the composition, preparation, preservation, of any food or drink and includes confectionary, chewing substances and any ingredient of such food, drink, confectionary or chewing substances. (emphasis added)

Having scrutinised some of the lexicons available, in particular The New Shorter Oxford English Dictionary, and in the context of the definition and terminology, 'article' must mean 'a particular material thing (of a specified class), a commodity or a piece of goods or property. By no stretch of the imagination, or however elastic the terminology is, would I concede that a live pig is an article that could be used in the composition, preparation or preservation of any food. A part of a slaughtered pig may be conceded as perhaps an article used as an ingredient in the composition of any food. As there is certainly no ambiguity in the word 'article', I have absolutely no excuse but to adhere to the canon of construction, and accord it its natural meaning. Bindra in *Interpretation of Statutes* at p. 480 had remarked:

> The language of the provisions should not be stretched to square with this or that constitutional theory in disregard of the cardinal rule of interpretation of any enactment, constitutional or other, that its spirit, no less than its intendment should be collected primarily from the natural meaning of the words used.

What roped in a wriggling and squeaking live pig within the context of food, from the point of view of the senior federal counsel was its enlargement scope, bearing in mind that Parliament in its wisdom had adverted to the term 'include'. In the normal course of event, the latter word has an extending force and does not limit the meaning of the term to the substance of the definition (*Queen v. Hermann* [1879] 4 QBD 284). In the circumstances of the case, however much I had bent over backwards to appreciate this argument, I was further perplexed by the rationality, of why under s. 2 of the Food Act 1983, Parliament had also seen it fit to include the definition of 'animal'. As this terminology includes 'whole or part of which are used for human consumption', I am inclined to conclude that dead or live animals fall within this definition. If all animals whether alive or dead, are supposed to be food, why the necessity

to insert a separate term, when it is wide enough to encompass anything? The only reasoning I could arrive at is that its special inclusion must mean that the animals, dead or alive, which include any quadruped, bird either domesticated or otherwise, fish, reptile or insect are quite distinct to the ingredients mentioned under the definition of food. In *Public Prosecutor v. Yeoh Fah Cheong & Anor* [1971] 1 MLJ 41, even though the terminology of 'include' had been promulgated, the court there had vehemently refused to extend the meaning of animal to include carcasses. One of the reasons supplied by the court was that s. 2 of the Animal Ordinance also had a definition of 'carcase', thus extricating, and distinguishing live animals with that of dead ones.

Along the way the learned senior federal counsel in no uncertain terms had stressed that a purposive interpretation of the law must be employed in the circumstances of the case, as the factor of public interest was uppermost. To accede to that suggestion, would entail the rejection of a plain and unambiguous statute, and to subject it to a canon of construction, which will make nonsense of the real sense of the words in the Food Act 1983.

The purposive approach principle is one of the branches of the canon of construction, and had been adopted way back in *Fothergill v. Monarch-Airlines* [1980] 3 WLR 221 by the House of Lords; the invocation of that principle must adhere to certain stringent preconditions. Suffice to say, "this purposive approach to the interpretation of legislation only applies where any doubt arises from the terms of words employed by the legislature. Where the words are precise and unambiguous, then the literal and strict construction rule should apply" (see also Salleh Buang's *Statutory Interpretation* at p. 102).

Bindra *(supra)* above had also authored:

> One of the cardinal rules of interpretation is that an enactment must be interpreted according to its plain language and it is not for the court to speculate as to the intention of the Legislature when the language is plain ... The rule of construction is "to intend the Legislature to have meant what they actually expressed."

To wind up on the issue of the meaning of food, LB Curzon in *Dictionary of Law* had defined it as:

> The word must be interpreted in its **primary sense** namely as something **taken into the system**, as nourishment, and not merely as a stimulant (*Hinde v. Allmand* [1918] LJ KB 893). (emphasis added)

To regurgitate, after some soul searching and appreciating the legal arguments of the learned senior federal counsel, it required more than the scope of the definition, to justify me to extend the meaning of food to include those live pigs, and at the end of the day legitimise the acts of the defendants. I cannot imagine a live pig can be something taken into the system as nourishment, however hard one tries. If I were to acquiesce to the version given by the defendants, no animals be they horses, camels, monkeys, even elephants, found in circuses, special cuisine for some ethnic groups around the globe, will be safe from the enthusiastic officers of the defendants.

As the 70 pigs were not food within the context of s. 13 of the Food Act 1983, then the defendants were the wrong authorities to seize the animals at the abattoir. Even if they had been the right authorities, the defendants aggravated matters when they contravened s. 5(1) of the Food Act, by not paying for the 'samples' when the seizure took place, for purposes of analysis. On the other hand, even this argument is unable to withstand the test of logic, as I cannot honestly say that pigs are 'samples' in the context of s. 5(1). Without beating around the proverbial bush, the Food Act caters for food in the ordinary man's accepted sense, whilst as far as living animals and matters incidental thereto, in the like of them being prepared for slaughter, the Animal Ordinance 1953 must be adverted to. I also seek solace from s. 86 of the Ordinance, which resulted in the Meat Inspection Rules 1985, from which a host of provisions have been promulgated making sense of the latter remark. Under the latter rules are found:

i. the structural and physical requirements of a slaughter house (r. 4);

ii. inspection services (r. 5);

iii. ante-mortem inspection of livestock and carcasses (r. 6);

iv. post-mortem inspection;

v. a catch-all provision under s. C; and

vi. others.

One cannot ignore the fact that the Ordinance is:

> An Ordinance to amend and consolidate the laws for preventing the introduction into, and the spreading within, the Federation of diseases of animals; for the control of the movement of animals into, within and from the Federation; for **the control of the slaughter** of animals ... and for purposes connected with the matters aforesaid. (emphasis added)

Surely, if the 4 out of the 70 pigs were required to be slaughtered, the provisions of the Meat Inspection Rules 1985 (and not the Food Act 1983) would have had to be complied with stringently. As opposed to the above purpose of the Ordinance, the Food Act 1983 is:

> An Act to protect the public against health hazard and fraud in the preparation, sale and use of food, and matters incidental thereto or connected therewith.

If the plaintiff had committed any offence, the correct authority therefore, the Veterinary Department empowered by the Animal Ordinance of 1953, should have stepped in, and seize the live animals. The defendants therefore here had wrongfully entered the jurisdiction of somebody else. By analogy also, however justified it is to arrest a speedster on the highway, that responsibility must invariably rest with the police and not, say an officer from the Fisheries Department. The latter cannot justify that wrongful arrest by saying that a purposive interpretation must be given to the Road Traffic Act, as 'public interest' requires it. That is not how the canon of construction works, and certainly repugnant to the prevailing legal and judicial system in Malaysia. That being so s. 33B of the Food Act will be unable to save the defendants from their current predicament.

So, if similar problems were to crop up again, what should the defendants as protectors of the public do? Returning to the above-mentioned case of *Public Prosecutor v. Yeoh Fah Cheong & Anor (supra)*, after Wan Sulaiman J had refused to extend the definition of animal to include dead animals, which resulted in the conviction being set aside, the relevant authorities had acknowledged that a *lacuna* existed. The result was that Parliament *vide* Act 321/75 subsequently amended the Ordinance, and included carcasses wherever the need arose. Taking a leaf from the above case, the defendants here could act similarly, by inviting Parliament to amend the law ie, by extending the definition of food to live animals. Unless that intervention occurs, the only available recourse left is for the defendants to wait patiently until the animals have been slaughtered, and then bringing the full weight of the law to bear upon the plaintiff.

After taking into consideration all the above reasons, I accordingly granted 'order in terms' with costs, to the prayers in the originating summons of the plaintiff. I also ordered that the senior assistant registrar hear the residual matter of assessment of damages.